

Members

Rep. Marlin Stutzman, Chairperson
Rep. Matt Bell
Rep. Matt Whetstone
Rep. Robert Kuzman
Rep. Terri Austin
Rep. Vanessa Summers
Sen. Thomas Wyss, Vice-Chairperson
Sen. Ron Alting
Sen. Vic Heinold
Sen. John Broden
Sen. Glenn Howard
Sen. Samuel Smith



INTERIM STUDY COMMITTEE ON ALCOHOLIC BEVERAGE ISSUES

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Authority: Legislative Council Resolution 06-01

MEETING MINUTES¹

Meeting Date: September 19, 2006
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington
St., Room 156-B
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Rep. Marlin Stutzman, Chairperson; Rep. Matt Bell; Rep. Matt Whetstone; Rep. Terri Austin; Rep. Vanessa Summers; Sen. Ron Alting; Sen. John Broden; Sen. Glenn Howard; Sen. Samuel Smith.

Members Absent: Rep. Robert Kuzman; Sen. Thomas Wyss, Vice-Chairperson; Sen. Vic Heinold.

Representative Stutzman, Chairperson, called the first meeting of the Interim Study Committee on Alcoholic Beverage Issues ("Committee") to order at 1:05 P.M. The members of the Committee introduced themselves. Representative Stutzman reviewed the charges to the Committee from the Legislative Council.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Mr. Dave Heath, Chairman of the Alcohol and Tobacco Commission

Mr. Heath testified that alcoholic beverages should be separated from other items in a store, and he would support legislation requiring that alcoholic beverages be partitioned off or separated from other items for sale. Mr. Heath also indicated that in the past the agency that is now the Alcohol and Tobacco Commission ("ATC") regulated only alcoholic beverages, but legislation had expanded the agency's duties to include regulation of tobacco. However, the ATC was not given the same authority to enforce regulations regarding tobacco as it has to enforce regulations regarding alcoholic beverages. For example, the ATC may cite retailers for violations of the tobacco laws, but the ATC has no authority to search the premises or revoke a retailer's tobacco certificate. The ATC continues to give citations for violations. Mr. Heath indicated that the ATC was given the authority to enforce the tobacco laws against retailers, and the enforcement is currently funded by funds from the master tobacco settlement agreement.

In response to Representative Austin's question about fines, Mr. Heath stated that fines were \$50 for a tobacco violation, which slowly graduates up to \$250 for additional violations. Mr. Heath noted that the fines graduate up only for three months and then the slate is wiped clean. After three months, tobacco retailer violators start all over again at a \$50 fine. He also testified that there were 18,000 citations against tobacco retailers in 2005. In response to Representative Bell's question, Mr. Heath stated that the 18,000 citations included all tobacco violations. He also made reference to the Tobacco Retailer Inspection Program. Mr. Heath stated that he would like the ATC to have the authority to revoke a retailer's tobacco certificate for violations of the tobacco laws.

Mr. Heath added that he would like the legislature to tweak the alcohol server training law to allow third parties to train alcohol servers. He also noted that he would like the ATC to have the ability to observe training by third parties. Senator Alting stated that he believed the ATC could approve third party training under the legislation that passed in 2006. Ms. U-Jung Cho, Hearing Judge for the ATC, indicated that the ATC would like more oversight of the server training programs. Senator Alting noted that one of the purposes of the 2006 legislation was to allow the ATC to approve and oversee trainer sever programs by third parties.

In discussing local board meetings, Mr. Heath explained the importance of allowing people to speak at these meetings. He testified that the ATC is preparing a local board handbook to provide guidelines for the local boards. He stated that local boards are arms of the ATC and some local boards refuse to approve permits because the store requesting the permit also sells gasoline. Mr. Heath indicated that the ATC had to overturn these decisions by local boards because a store may not be denied an alcohol permit just because it sells gasoline. Mr. Heath emphasized that local boards must follow the laws of Indiana. He also stated that he believed the suggestion to take excise officers off local boards would be a huge mistake because the officers know the alcoholic beverage laws and are an extension of the ATC. In response to Senator Broden's question, Mr. Heath indicated that legitimate reasons for denying a permit include examples of remonstrators who are against approval of a permit in a residential area where there is another outlet a few blocks away and other similar factors.

Senator Alting asked what Mr. Heath would like to do to require stores to keep alcoholic beverages in a separate area from other items. Mr. Heath replied that he would like legislation to happen sooner rather than later. He further noted that it would take the ATC over a year to promulgate a rule on this and a statute could be effective next year.

Representative Austin asked whether the current terminology in the alcoholic

beverage laws recognized the modern economy. She also asked whether some of the issues could be avoided if there was new terminology and different criteria. Mr. Heath stated that changes would be worth discussing.

Representative Stutzman provided a handout² containing information prepared by the Legislative Services Agency on the definition of "grocery store" in other states' laws and administrative rules.

Mr. Heath indicated that he supports legislation to allow sting operations. This would allow underage people to work with the ATC to catch people selling alcoholic beverages to minors. Mr. Heath also addressed the suggestion that the ATC travel to counties for appeals of local board decisions. He stated that there are potentially 107 boards and that traveling to so many areas could be difficult. Mr. Heath stated that he would like legislation to establish a fee for a person registering as a primary source of supply. He explained that other states charge a fee for registration.

Representative Whetstone asked Mr. Heath if the wine bill from 2006 had been implemented and whether Mr. Heath thought it would function. Mr. Heath stated that the ATC was in the process of implementing the law and that he thinks it will function. Mr. Fred Biesecker with Ice Miller provided a brief update on cases in other states challenging certain provisions of the states' wine shipping laws and indicated a federal case is still pending in Indiana.

Discussion on Charges to the Committee

Mr. Grant Monahan, President of the Indiana Retail Council ("Council"), provided the Committee a handout of his presentation.³ He indicated that the Council would like to end the debate over the definition of grocery store. He stated that the Council also recommended that the quota for grocery store permits be reduced from one per 1,500 in population to one per 2,000 with a provision to grandfather existing permits. He proposed giving the ATC authority to conduct compliance checks. In regard to local boards, Mr. Monahan, stated that he strongly supported ATC education of local boards and keeping excise officers on local boards. He stated that local boards should be acting in accordance with the law.

Mr. John Livengood, President of the Indiana Association of Beverage Retailers ("Association"), provided a handout⁴ to the members of the Committee. Mr. Livengood stated that he supported the ATC's proposals, including enforcement of alcohol and tobacco laws and sting operations. He stated that the Association is not happy with the noncompliance rates. He stated that retailers should be in compliance with the law and that the Association has sent out information encouraging retailers to call up the ATC and request server training. In addition, Mr. Livengood indicated that all clerks that sell alcoholic beverages should be licensed and have server training. He also supported mandatory carding of everyone and noted that currently there are guidelines for clerks to check identification if a person looks over 30 years of age. Mr. Livengood stated that last year he offered a compromise on the definition of grocery store, which included the federal definition. He testified that there needs to be a definition and at this time over half of the

² Exhibit A

³ Exhibit B

⁴ Exhibit C

grocery store permits are held by gas stations.

Mr. Livengood also testified that he did not believe complete equity in the industry is possible but that the state could get a lot closer to it. He indicated that if other alcoholic beverage outlets keep moving into the territory of package liquor stores, package liquor stores will be out of business. He emphasized that the issues were public policy issues and not turf issues. Furthermore, Mr. Livengood stated that regulations should apply, as much as possible, to all permit holders. For example, all clerks selling alcoholic beverages should have server training. He also suggested that the permit per number of people should be even further reduced than Mr. Monahan suggested.

Representative Whetstone asked whether if the status quo is maintained the package liquor stores would still go out of business. Mr. Livengood replied that if the status quo was maintained, the package liquor stores would survive. Representative Austin pointed out that statistics show that 65% of underage drinkers get alcoholic beverages from family and friends. She asked about establishing a higher penalty for a violation of alcoholic beverages laws by family and friends who provide alcoholic beverages to minors. Mr. Livengood indicated that 35% of underage drinkers get alcoholic beverages from another source, and he would support legislation to address this. Representative Austin asked if there should be legislation to raise the penalty for violations by families and friends first. Mr. Livengood stated that the two should go hand in hand, both higher penalties for family and friends and more retail restrictions. Senator Altling added that 22 states penalize parents who allow underage drinking in their homes.

Mr. Michael Lockard with Westside Improvement Association testified that a high percentage of underage drinkers get alcoholic beverages from parents and friends but the second highest percentage get alcoholic beverages from grocery stores, convenience stores, and pharmacies. He stated that liquor stores are third and bars are fourth. He discussed the proliferation of alcoholic beverage outlets and asked if people wanted an alcoholic beverage outlet on every corner. Mr. Lockard also suggested that the ATC hear appeals in the home county where the permit is requested. He indicated that requiring everyone to go to Indianapolis is a hassle, and the hearing judge is the only person who would have to go to the county. In addition, he stated that only 15 to 25 hearing decisions occur in a year. Mr. Lockard provided information on studies of underage drinking and indicated that Indiana exceeded seven of the nine categories involving underage drinking. He concluded that this may be a result of alcoholic beverages being so readily available in so many places in Indiana. He also expressed concern for allowing persons who are 18 years or older to work around and sell alcoholic beverages. He stated that anyone selling alcoholic beverages should be of age and have training.

Mr. Lockard also noted that stores may not be cited because officers do not have probable cause to stop people and check their grocery bags. He indicated that the cost to Indiana for underage drinking is 1.3 billion dollars and that Indiana is the thirty-sixth highest state with underage drinking problems. He stated that "grocery store" should be defined, and people who sell alcoholic beverages should be required to have a license and get training.

Ms. Mary Walker with Marion County Alliance of Neighborhood Associations agreed with the statements of Mr. Livengood and Mr. Lockard. She stated that "grocery store" needed to be defined, and Marion County had a special rule attempting to define the term. She also indicated that people should be required to be 21 years of age to enter an area where alcoholic beverages are located and sold. Ms. Walker further noted that the ATC does not know the local communities and the local boards make recommendations on the things they see and hear in the community and at the local board meetings. Ms.

Walker stated that ordinary citizens do not have the financial means and standing to challenge decisions by the ATC.

Mr. Randy Zion, an individual in the package liquor store business, said that all alcoholic beverage servers should be trained and that to have half the servers trained and the other half not trained did not make sense. He suggested that all people should have to show a government issued identification card to receive alcoholic beverages. He suggested that people who violate laws by giving alcoholic beverages to minors or minors who buy alcoholic beverages should have their licenses revoked. He stated that "grocery store" needs to be defined. In response to Representative Summers' concerns with negativity towards Marion County, Mr. Zion stated that Marion County is where he lives, which is why his remarks addressed Marion County.

Mr. Joe Lackey with the Indiana Grocery and Convenience Stores agreed with the statements given by Mr. Monahan. He stated that the issues discussed involve a turf battle. He stated that he had been willing to work on a definition for grocery store and suggested allowing package liquor stores to sell cold soda and other stores with permits to sell cold beer. Representative Whetstone asked what the impact of allowing package liquor stores to sell cold soda and other stores to sell cold beer would be. Mr. Lackey stated that the sales could double for the stores that would be able to sell cold beer. Mr. Lackey indicated that he agreed with the quota requirement for permits and that some of the grocery stores have chosen not to get permits. He said that other states have not created a monopoly for package liquor stores as Indiana has, which is why some of the difficulties and differences have occurred.

Other Business

Ms. Lisa Hutchenson with Indiana Coalition to Reduce Underage Drinking discussed social host responsibility laws that have passed in other states. She stated support for training of all clerks and provided statistical information on underage drinking. In response to Representative Austin's question concerning criminal penalties, Ms. Hutchenson stated that currently the penalty for serving minors is a Class C misdemeanor and that some other states have higher penalties. In response to Senator Howard's concerns regarding drinking at college football games, Ms. Hutchenson noted that some universities are addressing drinking when tailgating.

Ms. Dee Owens with the Indiana Coalition to Reduce Underage Drinking provided a handout⁵ on underage drinking to the Committee members. She indicated that alcohol consumption is detrimental to young brains and body development. She stated that it is the responsibility of adults not to provide alcoholic beverages to young people. She also suggested that retailers and dealers should have a defense to criminal liability if they have done everything they can to train servers and ensure people under 21 years of age are not being served alcoholic beverages.

Representative Whetstone asked if parents providing alcohol to their own child would be included under social host liability. Ms. Owens stated that she did not believe that would fall under the social host liability laws.

Representative Austin asked Ms. Cho if she believed the criminal penalties for individuals are sufficient to act as a deterrent to provide alcoholic beverages to minors. Ms. Cho indicated that in her opinion the criminal penalties are not sufficient.

⁵ Exhibit D

Ms. Lisa Murray with Hays Murray Castor stated that the legislation regarding direct wine shipment was being implemented, and she appreciated the work and help last session on the legislation.

Representative Stutzman stated that the Committee may have one more meeting the first or second week in October.

Adjournment

There being no further business to conduct, Representative Stutzman adjourned the meeting at approximately 3:30 P.M.